SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

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October Term, 1971
No. 70-5276

ALBERT DELANOR MUREL, *Petitioner,*

vs.

BALTIMORE CITY CRIMINAL COURT AND DIRECTOR OF PATUXENT INSTITUTION, STATE OF MARYLAND, *Respondents.*

ROBERT HAYES, JR., *Petitioner,*

vs.

HAROLD M. BOSLOW, M.D., Director, Patuxent Institution, *Respondent.*

BRADLEY ARLINGTON AVEY, *Petitioner,*

vs.

STATE OF MARYLAND, HAROLD M. BOSLOW AS DIRECTOR OF PATUXENT INSTITUTION, and VERNON L. PEPPERSACK AS COMMISSIONER, STATE DEPARTMENT OF CORRECTIONS, *Respondent.*

GEORGE L. CRESWELL, *Petitioner,*

vs.

DIRECTOR, PATUXENT INSTITUTION, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENT

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BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENT

Interest of Amicus Curiae

In recognition of the rapid growth of knowledge about many mental disorders short of insanity, California adopted a statute in 1937 which provided for the treatment of mentally incompetent persons not adjudged to be "insane." In 1939 California further provided for the care and treatment of "sexual psychopaths" who had been charged with the commission of a crime.[1]

As stated by petitioners herein, "The commitment hearing under the Defective Delinquent Act whether labeled civil or criminal is very similar to that under sexual psychopathic laws." (Petnr. Br. p. 74) Further, petitioners indicated that the situation of the examinee under the defective delinquent statute is comparable to that of persons suspected of being sexual psychopaths (Petnr. Br. pp. 63-64), and the *amicus curiae* brief of the Prison Research Council in support of petitioners also reports that analysis of sexual psychopathy laws applies equally to Maryland's defective delinquency laws (Amicus Br. p. 51).

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[1]Note, *Sane Laws for Sexual Psychopaths*, 1 Stan. L. Rev. 486, 494 (1949).

ARGUMENT

I

The Procedures Embodied in Maryland's Defective Delinquent Statute Are Properly Characterized as Civil in Nature and Do Not Offend Basic Constitutional Protections

Petitioners initially contended that the Constitution requires a hearing for the suspected defective delinquent "with *all* safeguards and protection which the State affords those charged with crimes." (Petnr. Br. p. 30) However, in their argument on the self-incriminating factors in defective delinquency proceedings, petitioners significantly concede that the case is "'civil' in nature" (Petnr. Br. p. 32) and that the proceeding is "*quasi-civil*, rather than criminal" (Petnr. Br. p. 33). Again, in their argument on double jeopardy, petitioners urge its application despite "the 'civil' nature of the case." (Petnr. Br. p. 34) This significant concession on the part of petitioners is, as has been found by the lower courts, quite accurate.

The relevant considerations for a determination of the character of the proceeding as either penal or regulatory have been delineated by this Court in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963):

> ". . . Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it

> may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions. Absent conclusive evidence of congressional intent as to the penal nature of a statute, these factors must be considered in relation to the statute on its face. . . ." (footnotes omitted)

The Circuit Court applied these factors to the Maryland Defective Delinquent Statute and concluded that the only purpose was the protection of society and the treatment of the individual to effectuate a cure if at all possible. It was further concluded that "the purpose of this act is so closely akin to the so-called Sexual Psychopath laws enforced in some twenty (20) states and the District of Columbia, that the decisions of the Courts in those jurisdictions that each of their laws is civil in nature is ample authority to conclude that the Maryland Act is regulatory." *Director v. Daniels,* 243 Md. 16, 37-40 [221 A. 2d 397] (1966).'

The courts of California have consistently held California's "sexual psychopath" law to be civil in nature. That law, now applied to "mentally disordered sex offenders," provides:

> As used in this article, "mentally disordered sex offender" means any person who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others. Wherever the term "sexual psychopath" is used in any code, such term shall be construed to refer to and mean a "mentally disordered sex offender." (Added Stats. 1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)
>
> Cal. Welf. & Inst. Code § 6300

The mentally disordered sex offender is not legally insane and is not necessarily a sex offender because the crime of which he is convicted need not be a sex offense.[2] The proceeding for commitment is civil in nature and is collateral to the proceedings of a valid criminal conviction. Welf. & Inst. Code §6302(a); *In re Bevill*, 68 Cal. 2d 854, 858-60 [69 Cal. Rptr. 599, 442 P. 2d 679] (1968); *Gross v. Superior Court*, 42 Cal. 2d 816, 820 [270 P. 2d 1025] (1954). The reason that the Legislature restricted commitment to those charged with the commission of a crime is that court action on the criminal charge is a convenient occasion for discovering a psychopathic condition. While the symptoms of drug addiction, alcoholism, and many forms of insanity can be detected by the layman, the symptoms of "sexual psychopathy" usually can be discovered only by a trained expert.[3] When the defendant is before the court, competent experts are available to examine him.

By requiring a conviction prior to commitment, the California Legislature intended to create a "more solid safeguard to liberty." *In re Bevill, supra*, 68 Cal. 2d 854, 860 [69 Cal. Rptr. 599, 442 P. 2d 679] (1968). An invalid commitment does not fulfill that legislative goal, and the requirements of the mentally disordered sex offender law are jurisdictional. *People v. Loignon*, 250 Cal. App. 2d 386, 390 [58 Cal. Rptr. 866] (1967).

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[2]For example, the case of *In re Leyva*, 8 Cal. App. 3d 404, 405 [87 Cal. Rptr. 265] (1970) involved a plea of guilty to battery, but the original charge was assault and attempted rape. The defendant was subsequently committed as a mentally disordered sex offender.

[3]Note, *Sane Laws for Sexual Psychopaths*, 1 Stan. L. Rev. 486, 494 (1949).

The structure of the statute manifests a continuing relation between civil commitment and criminal conviction. The criminal proceedings are adjourned when commitment proceedings commence. Welf. & Inst. Code §6302. If the subject is immediately determined not to be a mentally disordered sex offender, criminal proceedings are resumed. Welf. & Inst. Code §6315. If the subject is tentatively determined to be a mentally disordered sex offender, he is committed for 90 days and then returned to court. Upon his return, he is either finally committed or sentenced. Welf. & Inst. Code §6316. If he is committed, the committing court may require periodic reports on his status (Welf. & Inst. Code §6317) and may have the subject returned for examination at six-month intervals (Welf. & Inst. Code §6327). If an individual is eventually found not amenable to further treatment and not a danger to others, he is returned to court for sentencing. Welf. & Inst. Code §6325. Time spent under an indeterminate commitment is credited in determining the term of sentence. Welf. & Inst. Code §6325. If a person is found not amenable to further treatment and a continuing danger to others, he may be either recommitted or sentenced. Welf. & Inst. Code §6326.

The safeguard of this continuing relation between civil commitment and criminal conviction is predominant in the Maryland Defective Delinquent Statute also. Anno. Code of Md., Art. 31B, §6.

The primary purpose of quarantining mentally disordered sex offenders is protection of the public, because experience has shown that sexual psychopaths are unable to benefit from ordinary confinement and are in need of medical treatment. *People v. McCracken*, 39 Cal. 2d 336, 345 [246 P. 2d 913] (1952); *People*

v. Schaletzke, 239 Cal. App. 2d 881, 884 [49 Cal. Rptr. 275] (1966); 27 Cal. Jur. 2d 452. The dual interests promoted by the act are the protection of society against the mentally disordered sex offender and the rehabilitation of the offender. *People v. Rancier*, 240 Cal. App. 2d 579, 582 [49 Cal. Rptr. 876] (1966); *People v. Levy*, 151 Cal. App. 2d 460, 468 [311 P. 2d 897] (1957).

As the study made by Dr. Emory F. Hodges shows,[4] these goals are being accomplished by the Maryland provisions:

> The data from this study tends to confirm the assumption that a segment of the criminal population can be identified which probably will commit future crimes if released after a fixed sentence. The indeterminate sentence law appears reasonably successful in achieving the dual purpose of protecting society from the defective delinquent while simultaneously handling him more effectively and humanely.

The determinations that Maryland's Defective Delinquency Statute and California's mentally disordered sex offender law are civil in nature are not altered by the reasoning in *Specht v. Patterson*, 386 U.S. 605 (1967) and *Gerchman v. Maroney*, 355 F. 2d 302 (3rd Cir. 1966) relating to comparable acts in Colorado and Pennsylvania. The Colorado Sex Offenders Act provided for sentencing for an indeterminate term of one day to life without notice and a full hearing, thus resulting in "criminal punishment." *Specht, supra*, at 607-08. The Pennsylvania Barr-Walker Act provided

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[4]Hodges, "Crime Prevention by the Indeterminate Sentence Law," American Journal of Psychiatry, 128:3, September, 1971.

for a mandatory maximum sentence of life imprisonment. *Gerchman, supra,* at 309-10. In contrast, both Maryland (Art. 31B, §§9-10) and California (Welf. & Inst. Code §§6316-17) provide commitment for an indeterminate period subject to periodic review. Both the purpose and the practice of the Maryland Defective Delinquent Statute compel the conclusion that the act is civil in nature.

Under these circumstances, the reasoning of Mr. Chief Justice (then Circuit Judge) Warren E. Burger, concurring and dissenting in part in a decision on the Sexual Psychopath Act of the District of Columbia, is particularly appropriate:

> ". . . A civil commitment statute is not rendered constitutionally suspect as a form of preventive detention simply because in a given case the civil confinement may exceed the sentence which could be imposed under a criminal statute for the same acts. The possible disparity of confinement, which is by no means inevitable, may reasonably be justified by the social desirability and public necessity of providing the patient with therapy.
>
> Admittedly there are a multitude of problems involved in determining psychological trauma to the victims and then in balancing the gravity of the harm to the public with the necessity for involuntary commitment of a delinquent or emotionally disabled offender. But these are essentially legislative policy determinations, not primarily judicial questions. Indeed, Congress, being sensitive to the fact that psychiatry is at best an infant

and developing discipline which employs imprecise and changing standards and definitions, has experimented with a variety of statutes to provide a rehabilitative system for individuals prone to aberrant sexual conduct. Since we are not here dealing with *penal* legislation we should be especially cautious of substituting our own predilections concerning psychiatry for those of a fact-finding body entrusted with formulating our legal and social policies; courts have neither the authority nor the facilities nor the competence for marshalling the data necessary to displace the policy judgments of the legislature. The approach of each of us is all too likely to be shaped by what books we read on the subjects outside our own discipline." (footnotes omitted)

Cross v. Harris, 418 F. 2d 1095, 1109 (1969).

II

The Standard of Proof by a Preponderance of the Evidence in Commitment Proceedings Does Not Violate the Protection of Due Process of Law

Relying upon the rationale of *In re Winship*, 397 U.S. 358 (1970), petitioners contend that proof beyond a reasonable doubt is required in lieu of the current civil standard applied by the Maryland courts in defective delinquent proceedings. (Petnr. Br. p. 75.) *Amicus curiae* submits that the reasonable doubt standard is peculiarly applicable to criminal cases where the issue is guilt or innocence. The civil commitment proceedings in the instant case are not criminal cases and do not involve a determination of the defendant's guilt or innocence with respect to a criminal charge.

In his treatise on the law of evidence, Professor Wigmore observed:

> ". . . the chief topic of controversy has been whether in certain civil cases the measure of persuasion for *criminal cases* should be applied. Policy suggests that the latter test should be strictly confined to its original field, and that there ought to be no attempt to employ it in any civil case. . . ."
>
> 9 J. Wigmore, *Evidence* 327 (3d Ed. 1940).

This Court's opinion in *Winship* appears to accept Professor Wigmore's position. Indeed, the *Winship* decision is itself an application of the reasonable doubt standard to a proceeding essentially criminal in nature. At the conclusion of this Court's analysis of the policy considerations supporting the reasonable doubt standard, the *Winship* opinion states:

> "Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty." (Id. at 364.)

Further portions of the *Winship* opinion reinforce the position of *amicus curiae* that this Court's decision

was an application of the criminal standard to a proceeding which had all the earmarks of a criminal case. Writing for the Court, Mr. Justice Brennan stated the issue in these words:

> "We turn to the question whether juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt when they are charged with violation of a criminal law. The same considerations that demand extreme caution in fact-finding to protect the innocent adult apply as well to the innocent child." (Id. at 365.)

Later in the opinion, this Court held that judicial intervention for the welfare of the child ". . . cannot take the form of subjecting the child to the stigma of a finding that he violated a criminal law and to the possibility of institutional confinement on proof insufficient to convict him were he an adult." (Id. at 367.)

The foregoing quotations from the *Winship* opinion demonstrate that this Court's decision was not an application of the reasonable doubt standard to a case outside the traditional criminal sphere. The juvenile proceedings in *Winship* were, in essence, criminal because of the nature of the charges involved, and the determination of guilt or innocence.

In urging the adoption of the reasonable doubt standard in Maryland's defective delinquent proceedings, petitioners appear to link their contention to general due process standards. This Court has addressed itself to those standards in *Hannah v. Larche*, 363 U.S. 420, 442 (1960):

> "'Due process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. . . . Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account."

In analyzing the particular right involved in defective delinquent proceedings, it is readily apparent from the preceding discussion of *Winship* that the petitioners had no right to the criminal burden of proof. The Maryland commitment proceedings, as well as similar proceedings in California, do not involve a criminal charge or a determination of guilt or innocence. Rather the ultimate issue in these proceedings is whether the subject of the petition is, in fact, a defective delinquent or mentally disordered sex offender. A determination of that ultimate issue is not analogous to a criminal conviction.

In considering the nature of the proceeding involved, it has already been established that the proceedings at issue are civil in nature. Although civil, they are accompanied by safeguards not found in other proceedings utilizing the preponderance of evidence standard of proof. First, these proceedings require a valid

criminal conviction as a prerequisite to jurisdiction. Art. 31B, §6; Welf. & Inst. Code §6302(a); *See, In re Bevill, supra,* 68 Cal. 2d 854, 858-60, [69 Cal. Rptr. 599, 442 P.2d 679] (1968). In his initial criminal trial, the subject of commitment proceedings has been afforded the full panoply of rights to which he is entitled in any criminal case. These rights include the application of the reasonable doubt standard to the facts underlying the jurisdictional offense. In addition to the protection afforded by this preliminary trial on a criminal offense, the subject of commitment proceedings is further protected by provisions in the statutes for periodic review of his case during the term of commitment. Art. 31B, §§ 9-10; Welf. & Inst. Code, §§6316-17, 6327.

Finally, the possible burden on commitment proceedings of the imposition of the standard of reasonable doubt is substantial. Proof by a preponderance of the evidence is sufficient in a commitment case because the jury is in reality asked to confirm what is essentially a psychiatric diagnosis. The psychiatrists actually testify to their conclusions regarding the ultimate issue, status as a defective delinquent or a mentally disordered sex offender. The People's burden of persuasion ought to be no greater than the degree of assurance with which reputable psychiatrists express themselves. *See, People v. Valdez,* 260 Cal. App. 2d 895, 904 [67 Cal. Rptr. 583] (1968). Referring to the psychiatric technique of evaluating defective delinquency, Dr. Manfred Guttmacher has observed that "our diagnostic skills are not

so exact that we can be certain." (Joint Record Extract, p. 177[5]). Absent certainty, we must deal with probability, and probability within scientific theory cannot be measured by the standard of reasonable doubt.

As stated in the recent case of *In re Winship, supra,* 397 U.S. 358, 363 (1970), dealing with juvenile proceedings:

> "The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error."

Facts, not probabilities, are clearly available in a juvenile delinquency proceeding based upon the commission of a crime, and the application of the standard of proof beyond a reasonable doubt in such a case "will not compel the States to abandon or displace any of the substantive benefits of the juvenile process." *In re Winship, supra,* at 367; *In re Gault,* 387 U.S. 1, 21 (1967).

This conclusion cannot be made in defective delinquency or mentally disordered sex offender proceedings, however. Requiring the States to meet a standard of proof which exceeds that degree of assurance with which reputable psychiatrists express themselves will compel the States to abandon or displace the substantive benefits of protection of society and treatment of the individual. Furthermore, if the State is unable to meet a higher standard of proof, the alternative to treatment of the defective delinquent is imprisonment on his criminal conviction.

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[5]Appendix submitted in *Director v. Daniels,* 243 Md. 16, [221 A.2d 397] (1966).

Conclusion

For the foregoing reasons *amicus curiae* State of California joins respondent State of Maryland in urging that the judgment of the United States Court of Appeals for the Fourth Circuit be affirmed.

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APPENDIX

Applicable Provisions of California's Welfare and Institutions Code

§ *6300. Definitions*

As used in this article, "mentally disordered sex offender" means any person who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others. Wherever the term "sexual psychopath" is used in any code, such term shall be construed to refer to and mean a "mentally disordered sex offender." (Added Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ *6302. Certification for hearing and examination after conviction*

(a) General provisions; failure to register under Penal Code § 290.

(a) When a person is convicted of any criminal offense, whether or not a sex offense, the trial judge, on his own motion, or on motion of the prosecuting attorney, or on application by affidavit by or on behalf of the defendant, if it appears to the satisfaction of the court that there is probable cause for believing such a person is a mentally disordered sex offender within the meaning of this chapter, may adjourn the proceeding or suspend the sentence, as the case may be, and may certify the person for hearing and examination by the superior court of the county to determine whether the person is a mentally disordered sex of-

fender within the meaning of this article. Conviction upon a charge of violation of Section 290 of the Penal Code by failure to register as required thereby is conviction of a criminal offense within the meaning of this subdivision.

* * *

§ *6315. Hearing; findings; return to original court*

If, upon the hearing, the person is found by the superior court not to be a mentally disordered sex offender, the superior court shall return the person to the court in which the case originated for such disposition as that court may deem necessary and proper.

(Added by Stats. 1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats. 1970, c. 685, p. 1313, § 2.)

§ *6316. Return to criminal court for further disposition or commitment to hospital for care or treatment*

If, after examination and hearing, the court finds that the person is a mentally disordered sex offender and that the person could benefit by treatment in a state hospital, the court in its discretion has the alternative to return the person to the criminal court for further disposition or may make an order committing the person to the department for placement in a state hospital for an indeterminate period and a copy of such commitment shall be personally served upon said person within five days after the making of such order.

If after examination and hearing, the court finds that the person is a mentally disordered sex offender but will not benefit by care or treatment in a state

hospital the court shall then cause the person to be returned to the court in which the criminal charge was tried to await further action with reference to such criminal charge. Such court shall resume the proceedings and shall impose sentence or make such other suitable disposition of the case as the court deems necessary. If, however, such court is satisfied that the person is a mentally disordered sex offender but would not benefit by care or treatment in a state hospital it may recertify the person to the superior court of the county. The superior court may make an order committing the person for an indefinite period to the Department of Mental Hygiene for placement in a state institution or institutional unit for the care and treatment of mentally disordered sex offenders, designated by the court and provided pursuant to Section 6326. (Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats. 1970, c, 685, p. 1313, § 3.)

§ *6317. Progress reports*

If the court orders the commitment of the person to the department for placemnet in a state hospital for an indeterminate period, the court may, in the order of commitment, require the superintendent of the state hospital to make periodic reports to the court concerning the person's progress towards recovery.

(Added Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ *6325. Certification as to recovery; return to court; probation; credit for hospitalization time*

Whenever a person who is committed for an indeterminate period to the department for placement in a

state hospital as a mentally disordered sex offender (a) has been treated to such an extent that in the opinion of the superintendent the person will not benefit by further care and treatment in the hospital and is not a danger to the health and safety of others, or (b) has not recovered, and in the opinion of the superintendent the person is still a danger to the health and safety of others, the superintendent of the hopital shall file with the committing court a certification of his opinion under (a) or (b), as the case may be, including therein a report, diagnosis and recommendation concerning the person's future care, supervision or treatment. If the opinion so certified is under (a) the committing court shall forthwith order the return of the person to said committing court and shall thereafter cause the person to be returned to the court in which the criminal charge was tried to await further action with reference to such criminal charge.

Such court shall resume the proceedings, upon the return of the person to the court, and after considering all the evidence before it may place the person on probation for a period of not less than five years if the criminal charge permits such probation and the person is otherwise eligible for probation. As a condition of such probation the person shall totally abstain from the use of alcoholic liquor or beverages. In any case, where the person is sentenced on a criminal charge, the time the person spent under indeterminate commitment as a mentally disordered sex offender shall be credited in fixing his term of sentence.

(Added Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6326. *Certification of no recovery and continued menace*

Return to committing court.

If the opinion so certified is under subdivision (b) of Section 6325, the committing court shall forthwith order the return of the person to said committing court and shall thereafter cause the person to be returned to the court in which the criminal charge was tried to await further action with reference to such criminal charge.

Recertification and recommitment.

Such court shall resume the proceedings and after considering all the evidence before it shall impose sentence or make such other disposition of the case as the court may deem necessary and proper; provided, that said court, if satisfied that the person has not recovered from his mental disorder and is still a danger to the health and safety of others, may recertify the person to the superior court of the county. If said court after hearing makes a finding that the person is still a mentally disordered sex offender and is still a danger to the health and safety of others, it may make an order recommitting the person for an indeterminate period to the Department of Mental Hygiene for placement in a state institution or institutional unit for the care and treatment of such mentally disordered sex offenders designated by the court. At such hearing or hearings, the person shall be entitled to present witnesses in his own behalf, to be represented by counsel and to cross-examine any witnesses who testify against him.

Facilities for custodial care and treatment.

The Director of Mental Hygiene, with the approval of the Director of Corrections and the Director of Finance, may provide on the grounds of a state institution or institutions under the jurisdiction of the Department of Corrections or the Department of Mental Hygiene one or more institutional units to be used for the custodial care and treatment of mentally disordered sex offenders. Each such unit shall be administered in the manner provided by law for the government of the institution in which such unit is established.

Delivery to Institution; duration of confinement.

The court shall cause the person so recommitted to be delivered to the state institution or the institutional unit so designated. The person shall remain therein or in any other such institution or institutional unit to which he may be transferred by the Director of Mental Hygiene until the person is no longer a danger to the health and safety of others. Thereupon the proceedings set forth in Section 6325 shall be followed with respect to the certifying of an opinion to the committing court and the release of the person thereby.

(Added Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ *6327. Person committed for indeterminate period; report, return to court; hearing; recommitment; subsequent hearings; recovery and return to criminal court*

After a person has been committed for an indeterminate period to the department for placement in a state hospital as a mentally disordered sex offender

and has been confined for a period of not less than six months from the date of the order of commitment, the committing court may upon its own motion or on motion by or on behalf of the person committed, require the superintendent of the state hospital to which the person was committed to forward to the committing court, within 30 days, his opinion under (a) or (b) of Section 6325, including therein a report, diagnosis and recommendation concerning the person's future care, supervision, or treatment. After receipt of the report, the committing court may order the return of the person to the court for a hearing as to whether the person is still a mentally disordered sex offender within the meaning of this article.

The hearing shall be conducted substantially in accordance with Section 6306 to 6314, inclusive. If, after the hearing, the judge finds that the person has not recovered from his mental disorder and is still a danger to the health and safety of others, he shall order the person returned to the Department of Mental Hygiene under the prior order of commitment for an indeterminate period, or, if the opinion of the superintendent of the state hospital was under (b) of Section 6325, he may make and sign an order recommitting the person for an indeterminate period to the Department of Mental Hygiene for placement in a state institution or institutional unit for the care and treatment of such mentally disordered sex offenders designated by the court and provided pursuant to Section 6326. A subsequent hearing may not be held under this section until the person has been confined for an additional period of six months from the date of his return to the department. If the court finds that the person has recovered from his mental disorder to such an extent that he is

no longer a danger to the health and safety of others, or that he will not benefit by further care and treatment in the hospital and is not a danger to the health and safety of others, the committing court shall thereafter cause the person to be returned to the court in which the criminal charge was tried to await further action with reference to such criminal charge.

(Added Stats. 1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)